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January 7, 2015

VIA ECF

Honorable Judge Richard M. Berman  
United States District Judge  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street, Courtroom 17B  
New York, NY 10007

Re: *Rio Tinto plc v. Vale S.A., et al.*, Civil Action No. 14-cv-3042 (RMB) (AJP) (S.D.N.Y.)

Dear Judge Berman:

We write on behalf of the six appearing defendants ("Defendants") in the above-captioned case to request the following briefing schedule for Defendants' motion to dismiss the Amended Complaint pursuant to Rule 12(b)(6):

- Defendants' joint motion to dismiss due January 30, 2015;
- Plaintiff's opposition due February 27, 2015; and
- Defendants' reply due March 13.

The following defendants who contest personal jurisdiction also request the Court to enter the identical scheduling order with respect to those defendants' motion to dismiss pursuant to Rule 12(b)(2): Benjamin Steinmetz, BSGR, VBG-Vale BSGR Limited, and BSG Resources Guinée SARL. That motion will be based on a different rule and addressed to different allegations and different law than the Rule 12(b)(6) motion to dismiss. Consequently, these defendants also request leave to file a separate brief on their 12(b)(2) motion to dismiss.

Plaintiff has consented to the above schedule. The motions will be based on the grounds identified in Defendants' pre-motion letter filed on July 17, 2014, which was the subject of a pre-motion conference held by the Court on July 28, 2014. (*See* Dkts. 70, 76.) Plaintiff's subsequent

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amendments to its complaint (Dkt. 83), do not cure the deficiencies identified in Defendants' pre-motion letter.

This Court's Individual Practices provide that all motions shall be filed jointly and that memoranda of law in support of and in opposition to a motion may be up to 25 pages. Ordinarily, then, each of the defendants filing the 12(b)(6) motion would be restricted to a combined 25 pages for their brief as would the defendants filing the 12(b)(2) motion. Here, the 12(b)(6) motion will be made by six different Defendants, each of which is alleged to have played a different role in the alleged RICO enterprise and several of which have distinctive arguments not shared by any other defendants. By contrast, the 12(b)(2) motion is made by a different group of defendants and does not involve Vale. Further, defendant Vale is adverse to defendants BSGR and Steinmetz in a pre-existing foreign proceeding brought by Vale concerning many of the same issues involved here. However, if Your Honor requires that the 12(b)(6) and 12(b)(2) motions be filed jointly, Defendants respectfully request that the Court permit them to file a joint opening brief of 60 pages (10 pages more than the combined 50 pages for the two separate motions). Plaintiff would be given 60 pages for its opposition, and there would be 25 pages for Defendants' joint reply. Plaintiff has not consented to this request.

Respectfully submitted,

/s/ Lewis J. Liman

Lewis J. Liman